HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Appeal No. 2093 of 2001

605 of 1984 (Old No.)

Rajendra Singh … Appellant

Versus

State … Respondent

With

Criminal Appeal No. 728 of 2001

610 of 1984 (Old No.)

Shiv Singh … Appellant

Versus

State … Respondent

Approved for reporting.

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~~Not approved for reporting.~~

Date of Decision 2nd September 2004.

Initial of Judge.

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IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No. 2093 of 2001
605 of 1984 (Old No.)

Reserved

Rajendra Singh
S/o Sri Topar Singh Chauhan
R/o Sargola Patti Biehla Nagpur
P.S. Karna Prayag
District Chamoli … Appellant

Versus

State … Respondent

With

Criminal Appeal No. 728 of 2001
610 of 1984 (Old No.)

Shiv Singh S/o Sri Narain Singh
R/o Ratoli Patti Khas
P.O. Khanddi
P.S. Tehri
District Tehri … Appellant

Versus

State … Respondent

Sri K.S. Verma learned counsel for the appellants
Sri U.P.S. Negi – Addl. Advocate General learned counsel for the State

Coram : Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

These appeals have been preferred by the appellants Rajendra Singh and Shiv Singh against the judgment and order dated 13.02.1984 passed by Additional Sessions Judge, Dehradun in S.T. No. 57 of 1983, State Vs. Shiv Singh and Rajendra Singh convicting the appellant Shiv Singh under

Section 302 I.P.C. and Rajendra Singh under Section 302 read with Section 34 and sentencing them for life imprisonment.

As both the appeals arise out against the same judgment and order. Hence are being decided by common judgment.

Brief facts of the prosecution case as emerged out from the record are that one Chander Singh (P.W1) informant of the present case was employed as a waiter in a restaurant known as ‘Cafetaria’ situated at Mal Road, Mussoorie. His friend Rajendra Singh appellant had came to Mussoorie from Chandrigarh along with Shiv Singh deceased. (The name of the appellant and the deceased are same, therefore, appellant Shiv Singh hereinafter will be referred as appellant Shiv Singh and deceased as deceased Shiv Singh.) Deceased Shiv Singh was working as a waiter in the hotel ‘Satkar’. While scribe of the F.I.R. Bishamber Datt P.W. 2 as well as appellant Shiv Singh were employed as waiter in hotel ‘Quality’. All the appellants and the witnesses as well as the informant knew each other prior to this incident.

On 20.05.1983 Chander Singh (P.W.1), appellant Rajendra Singh, deceased Shiv Singh as well as appellant Shiv Singh after having their dinner went to ‘Royalty Picture Hall’ to see a movie. During the show, deceased Shiv Singh went outside the Hall several times and this conduct of deceased was not appreciated by the Gatekeeper who scolded and directed him to sit in his chair properly. The show ended at 01.10 am. in the night between 20/21.05.1983. Thereafter appellant Shiv Singh, Rajendra Singh and deceased Shiv Singh insisted to pass their night in the room of Chander Singh who lived in ‘Cafetaria’. The room of Chander Singh was in fact in a kitchen at the first floor of ‘Cafetaria’. Chander Singh

conceded their request and accordingly all the four persons came to the room of Chander Singh. Chander Singh had his own bedding which he spread over a table and provided a bedding to the remaining three who decided to sleep together on the floor.

After sometime all the three persons lying on the floor started chatting. The deceased Shiv Singh asked the appellant Shiv Singh that he considers himself to be a notorious criminal but in the Picture Hall he could not utter even a single word, even after he was scolded by the Gatekeeper. At this, the appellant Shiv Singh replied that he was rascal and scolded him to slap if he did not sleep. This provoked the deceased who stood up and there was some scuffle between the deceased Shiv Singh and the appellant Shiv Singh and meanwhile appellant Rajendra Singh grabbed over the deceased by neck and appellant Shiv Singh whipped out a knife from his pocket and inflicted the same forcefully on front side of neck of the deceased Shiv Singh as a result of which deceased Shiv Singh fell on the earth and collapsed.

Thereafter both the appellants Shiv Singh and Rajendra Singh left the victim lying in pool of blood and threatened Chander Singh not to chase them. Chander Singh followed the appellants to their rooms of the restaurant known as ‘Quality Hotel’ where they use to reside along with Bishamber Datt.

Chander Singh informed Bishamber Datt that the deceased Shiv Singh was lying injured. Chander Singh requested Bishamber Datt to accompany him to the place of the occurrence. Bishamber Datt and Chander Singh after reaching the place of the occurrence found Shiv Singh dead. Thereafter Chander Singh got a report scribed by Bishamber Datt and

submitted the same to the Police Station Mussoorie at 2:30 am on 21.05.1983.

The inquest on the dead body of the deceased was prepared and thereafter body of the deceased was sent for autopsy. The post mortem was conducted on 21.05.1983 at 1:30 pm by Dr. A.K. Shukla. The Investigation Officer prepared the memo with regard to the recovered articles as well as bloodstained floor and garments. Thereafter, he prepared site plan.

After completing all formalities at the place of the occurrence, the Investigation Officer went in search of the appellants and succeeded in apprehending them at about 10:30 am on 21.05.1983 while they were on their way from Mussoorie to Dehradun via Baluganz. The appellant Shiv Singh disclosed the Investigation Officer that he had concealed the knife by which he murdered the deceased Shiv Singh in a *Khandhar*. The Investigation Officer took both the appellants to the said *Khandhar* at Baluganz and the appellant Shiv Singh took the knife out of the heap of stones and green grass. The knife had blood stained and the Investigation Officer prepared the memo in this regard. The Investigating Officer after completing all the formalities of the investigation submitted the chargesheet against the appellants.

After submission of the chargesheet, the appellants were committed to the court of Sessions and they appeared before the trial court in order to face their trial.

The trial court on 13.07.1983 framed the charge under Section 302 read with Section 34 I.P.C. against the appellant Rajendra Singh and under Section 302 I.P.C. against the

appellant Shiv Singh. Both the appellants denied the charge leveled against them and claimed their trial.

The prosecution in order to support its case produced P.W. 1 Chander Singh (informant), P.W. 2 Bishamber Datt (scribe of F.I.R.), P.W. 3 Vinod Rawat, P.W. 4 Head Constable Pusba Nand, P.W. 5 Constable Mohendra Singh, P.W. 6 S.I-Kaptan Singh (Investigation Officer) and P.W. 7 Dr. Yogendra Mittal (examined the injuries of appellant Rajendra Singh).

After the evidence of the prosecution was over, the statement of the appellant was recorded under Section 313 Cr.P.C. The appellant did not adduce any evidence in their defence.

After having perused the entire evidence on record and hearing the learned counsel for the parties, learned trial court convicted both the appellants for the charges leveled against them and sentence them life imprisonment vide judgment and order dated 13.02.1984.

Feeling aggrieved by the aforesaid impugned judgment and order both the appellants preferred separate appeals before the before the Hon’ble Allahabad High Court which have subsequently been transferred to this Court after creation of Uttaranchal, for disposal.

We have heard learned counsel for the parties and perused the record.

Chander Singh (P.W.1) is the only eyewitness of the occurrence, produced by the prosecution and according to him, immediately after the occurrence, he reached at the residence of Bishamber Datt with whom the appellants had been residing and when he did not find the appellants over there then he disclosed the happening to the Bishamber Datt. This witness

also requested Bishamber Datt to accompany him to the place of the occurrence and when these two persons reached over there they found Shiv Singh dead. Thereafter, written report was scribed by Bishamber Datt on the dictation of Chander Singh and the same was submitted at the Police Station Mussoorie at 2:30 am.

Learned counsel for the appellants has argued that the conduct of Chander Singh appears to be doubtful, as he should have gone to the Police Station first as the distance of the Police Station is much less than the distance of the place where Bishamber Datt resided. It has also been submitted that as per the deposition of Chander Singh (P.W.1), the report seems to have been prepared at the dictation of the police. It has further been submitted that the report itself has contradictory version and does not corroborate the prosecution case.

We do not find any force in the argument advanced by the learned counsel for the appellants as the deposition of Chander Singh (P.W.1) reveals that he was close and familiar with Bishamber Datt (P.W.2) since before the occurrence. Therefore, it was quite natural on his part to have thought it proper to go to Bishamber Datt (P.W.2) and inform him in the presence of the appellants who were supposed to be there at the residence of Bishamber Datt (P.W.2). It cannot be ignored that the informant Chander Singh (P.W.1) is not an educated person as he hardly knows read and write his name. Moreover, this witness might not have contemplated the instantaneous death of the deceased Shiv Singh. Therefore, this witness took the decision to go to the room of Bishamber Datt (P.W.2) first and tell the tale to him before taking further steps.

The statement of Bishamber Datt (P.W.2) also reveals that it was Chander Singh (P.W.1) who asked to accompany him to the '*Cafeteria'* (place of occurrence) with a view to take the injured Shiv Singh to hospital hence under these circumstances, visit of Chander Singh (P.W.1) to the place of Bishamber Datt (P.W.2) first, cannot be said to be unwanted and unreasonable.

Bishamber Datt (P.W.2) has turned hostile on the material point of time as he has deposed that Chander Singh (P.W.1) came to him at about 2:30am and enquired about the appellants, thereafter, told him about the incident. It is true that this witness has turned hostile as far as the time is concerned but this part cannot be ignored that Chander Singh (P.W.1) visited the place of Bishamber Datt (P.W.2) first then the report was scribed by Bishamber Datt (P.W.2) on the dictation of Chander Singh (P.W.1).

Pusba Nand (P.W.4) is the Head Constable of the Police Station who has deposed before the court that the case was registered in G.D. at 2:30am on 21.05.1983. Therefore, if there is a difference in the statement of Bishamber Datt (P.W.2) pertaining to the time, the same does not discredit the prosecution case.

It is established on the basis of the evidence that immediately after the occurrence Chander Singh (P.W.1) went to the quarter of Bishamber Datt (P.W.2) in search of the appellants and did not find them over there. He also told the incident to Bishamber Datt (P.W.2) and got the written report scribed by him. The conduct of Chander Singh (P.W.1) appears to be quite natural as everyone under the aforesaid circumstances would like to visit the place of someone whom

he knows closely or with whom he is quite familiar, instead of going to the Police Station straightway.

As far as this submission advanced by the learned counsel for the appellants that the First Information Report was written at the dictation of the police concerned that too is devoid of any force.

Ex. Ka. 1 is the written report (F.I.R.) and the same does not show any sign or indication of application of an intelligent brain behind it. Merely because Bishamber Datt (P.W.2) has deposed that police assisted Chander Singh (P.W.1) in dictating the report does not give any indication that the report was dictated by the police. Further the word *'room'* instead of *'kitchen'* finds place in the report, but that too does not go to discredit the prosecution case. The kitchen has sufficient space in order to provide the place to sleep for four persons. Hence, there is every possibility that this place is a *'room'* which is in fact being used as a '*kitchen'*.

The statement of Bishamber Datt (P.W.2) does not appear to be acceptable, as he has deposed that report was submitted at 7:00am. While the other evidence available on the record completely discard the same Vinod Rawat (P.W.3) who is the owner of the *'Cafeteria'* has deposed that he was summoned by the police at 5:00am and the inquest report was prepared soon after his arrival and in the inquest report the time of lodging the F.I.R. is 2:30am. Therefore, it appears to us that Bishamber Datt (P.W.2) seems to have been won over by the accused/appellants and it was on account of his being under their influence, he stated that the police assisted Chander Singh (P.W.1) in dictating the report, whereever the latter committed mistake.

As far as another submission advanced by the learned counsel for the appellants that the report has a different version from the one which has been unfolded by Chander Singh (P.W.1) before the court. Learned counsel for the appellants invited our attention towards the minor contradictions in the statements of Chander Singh (P.W.1), and has submitted that Chander Singh (P.W.1) did not mention in his report that the accused and the deceased stood up on their bed at the time of altercation and the deceased collapsed after sustaining knife injuries. Similarly, the fact of Rajender Singh – appellant having grabbed over the neck of the deceased has not been mentioned in the F.I.R. According to learned counsel for the appellants, the same is the improvement, which could not be accepted, and on account of this improvement the testimony of Chander Singh (P.W.1) should be rejected.

We do not find any force in this argument.

It is significant to note that the F.I.R. is not an encyclopedia so as to contain all the minute details in it regarding the evidence. It is sufficient if all the relevant important facts are mentioned in the report. Certainly an omission which is contradictory in nature can raise some suspicion on the genuineness of the report but in the instant case it is not so.

A careful perusal of the written report Ex. Ka. 1 on the basis of which the First Information Report was drawn would reveal that all the material facts have been clearly mentioned therein. It has been clearly mentioned that an altercation took place between the deceased Shiv Singh and the accused/appellant Shiv Singh and during the altercation Rajendra Singh – appellant pounced the deceased Shiv Singh

and meantime accused/appellant Shiv Singh took out his knife and inflicted a fatal blow to the deceased as a result of which he fell down and succumbed to injuries. The difference of the language between the prosecution version as well recited in the report and the evidence adduced before the court will not make the prosecution case suspicious. The pith and substance of both the versions is the same. It was not at all necessary for Chander Singh (P.W.1) to mention all the minute detail in the F.I.R. Hence considering all the facts and circumstances and particularly, the post mortem report which indicates that the deceased suffered a serious injury in his neck, we hold that there is no inconsistency in the F.I.R. and the evidence of Chander Singh (P.W.1) which is adduced before the court.

As far as the ocular version adduced by the prosecution pertaining to the occurrence is concerned, it reveals that Chander Singh (P.W.1) sole eye-witness has narrated the manner of the incident in which it happened. Chander Singh (P.W.1) has deposed that he, the deceased Shiv Singh and both the appellants were familiar to each other prior to the occurrence as all of them belong to the same region. The appellants have not denied this fact. Therefore, it is quite clear that the appellants and the deceased Shiv Singh as well as the informant Chander Singh (P.W.1) were in good terms and on account of the same all of them had gone to see a movie together. The appellants although have denied that they went to see the movie along with the deceased but admitted this fact that they had gone to see *'Nastik'* movie in night show at *'Royalty Cinema Hall'*.

It is worthy to mention here that four cinema tickets were found from the pocket of the deceased Shiv Singh and the

Investigating Officer prepared the recovery memo to that effect. Therefore, the presence of four tickets in the pocket of the deceased corroborates the testimony of Chander Singh (P.W.1) that he along with the accused/appellants and the deceased Shiv Singh had gone to see the movie and the deceased Shiv Singh purchased all the tickets. This circumstances clearly establishes the prosecution version to this effect that the appellants were in the accompany of the deceased Shiv Singh and informant Chander Singh (P.W. 1) in the cinema show.

Chander Singh (P.W.1) has further deposed that the show ended at about 1:30am and all the four persons i.e. he, deceased Shiv Singh and both the appellants came to his *'Cafeteria'* because of the fact that the appellants and the deceased insisted to stay together in the night over there. This witness has further deposed that he spread his bed cover on the table and provided a quilt and bed cover to rest of three. This witness has further deposed that after sometime, the deceased Shiv Singh and the appellant Shiv Singh had some hot altercation on account of the fact that while in the cinema hall deceased Shiv Singh was frequently going in and out of the hall it was seriously objected by the Gatekeeper who scolded the deceased Shiv Singh. Deceased Shiv Singh expressed his resentment against the appellant Shiv Singh who kept mum at the time when Gatekeeper misbehaved with him. On this the appellant asked the deceased Shiv Singh that he himself was Rascal and threatened the deceased Shiv Singh to slap if the latter would not sleep. This furiated the deceased Shiv Singh and led to both of them getting up and thereafter appellant gave a pounce to the deceased Shiv Singh who, in retaliation inflicted two pounces to the accused/appellant Shiv Singh. This witness has further

deposed that meanwhile appellant Rajendra Singh grabbed over the deceased Shiv Singh and appellant Shiv Singh whipped out a knife from the pocket and inflicted a fatal blow on the front side of his neck of the deceased as a result of which the deceased collapsed. The version appears to be quite natural. We, therefore, found that the evidence of Chander Singh (P.W.1) as regards altercation between the deceased Shiv Singh and the appellant Shiv Singh which led subsequently exchanged of pounces and then knife blow to the deceased Shiv Singh by the appellant Shiv Singh, is worth acceptable.

The evidence on record shows that the appellant Shiv Singh murdered the deceased Shiv Singh because the latter challenged the merit of his notoriety.

Chander Singh (P.W.1) has further asserted in his evidence that soon after the occurrence both the appellants escaped with a threatening to him not to chase them. The deposition of Chander Singh (P.W.1) shows that despite warning given to him, he went to the room of Bishamber Datt (P.W.2) in search of the appellants as they resided over there. When he enquired about the appellants, Bishamber Datt (P.W.2) replied that the appellants had already left with bag and baggage. The testimony of Chaneder Singh (P.W.1) find corroboration with the evidence of Bishamber Datt (P.W.2) who has admitted in his deposition that the two appellants who were living with him in his room before the occurrence came to his room at about 2:00 to 2:30am. On being questioned, they replied that they were going to Dehradun. Bishamber Datt (P.W.2) also stated that a little after the departure of the appellants, Chander Singh (P.W.1) came to him and enquired about the appellants. He has also deposed that Chander Singh

(P.W.1) informed him that there had been a quarrel between the appellants and the deceased Shiv Singh and at that time, the appellants had already left his room with bag and baggage. Bishamber Datt (P.W.2) has also deposed that Chander Singh (P.W.1) asked him to accompany to the *'Cafeteria'* for taking the injured Shiv Singh to hospital. Therefore, it is quite clear that when Chander Singh (P.W.1) informed Bishamber Datt (P.W.2) about deceased Shiv Singh lying injured, he must have certainly informed him as to who had caused injuries upon the deceased Shiv Singh. The evidence, therefore, clearly establishes this aspect that these appellants after causing injuries to the deceased went to the room of Bishamber Datt (P.W.2) and after collecting their luggage they left the room about 2:30am in order to make their escape good from the clutches of the police. In normal course, there was no propriety for the appellants to leave the room of Bishamber Datt (P.W.2) in the dark and dead hours of the night at 2:30am and that too with bag and baggage. The shoes recovered from the place of occurrence belong to the appellant Shiv Singh, who after the occurrence in a haste to escape left his shoes and fled away wearing the shoes of the deceased Shiv Singh in confusion. Further the shoes of deceased Shiv Singh were recovered from the accused/appellant Shiv Singh at the time of his arrest. Therefore, all these evidence clearly go to show that the prosecution version has been proved with regard to the murder of the Shiv Singh committed by the appellants. The solitary ocular account of Chander Singh (P.W.1) establishes beyond reasonable doubt that the appellant Rajendra Singh grabbed over the deceased and the appellant Shiv Singh in the meantime

inflicted a knife blow in the neck of the deceased Shiv Singh as a result of which Shiv Singh succumbed injuries.

Another important aspect in this case is the recovery of the knife which was used in the commission of the crime. As per the prosecution evidence both the appellants were arrested at about 11:00am on 21.05.1983 near a Lime Mine situated at Jadipani on the way to Dehradun. Both the appellants were identified by Chander Singh (P.W.1) and the Investigating Officer arrested them. The place from where the appellants were arrested, is at a distance of about 6 km from the police station. Investigation Officer Kaptan Singh (P.W.6) has deposed that he along with Chander Singh (P.W.1) and other police constables left the *'Cafeteria'* in search of the accused/appellants. Investigating Officer and the informant Chander Singh (P.W.1) have constantly deposed that they reached Baluganj police post in search of the accused/appellants but did not get any clue and when they reached near Tamta House, they got the information that two persons one of them having Attachi case in his hand and the other, a bag, had passed away that way a little before and both of them enquiring about the shortest route of Dehradun. These witnesses have also deposed that on this information they came down and saw from the top of hillock that two accused/appellants going down towards Dehradun. The Investigating Officer thereafter rapidly rushed forward and arrested the appellants. Soon after their arrest the recovery memo was prepared pertaining to the belongings of the appellants and the appellant Shiv Singh during the interrogation confessed that he had concealed the knife in *'khandahar'* with which he caused injuries to the deceased. The appellants thereafter were taken to the

'Khandahar' which is situated at a distance of about 1 km from Baluganj. The appellant Shiv Singh took out the knife from amidst stones and a bush of green grass. The recovery memo with regard to the knife was prepared at the *'Khandahar'* itself and this recovery of the knife at the instance of the appellant Shiv Singh fully corroborates that it was he, who had caused fatal knife injuries to the deceased Shiv Singh.

Learned counsel for the appellants has argued that the recovery of the knife is not admissible in evidence because there was no confessional statement of the appellant Shiv Singh as regards authorship of the concealment of the knife.

We do not find any substance in this argument.

The evidence of Kaptan Singh (P.W.6) shows that he has deposed that the accused/appellant Shiv Singh could recover the knife with which he assaulted the deceased. The only part of this confessional statement which pertains to the recovery of knife used in the crime is admissible in evidence and it is really a statement pertaining to the authorship of the concealment.

We therefore, hold that it is not a case of simple recovery of knife but a case of recovery of knife on the basis of confessional statement of the appellant Shiv Singh which was made by him to the investigating Officer and on the basis of which he was brought to the *'Khandahar'* from where he picked out the knife. The evidence adduced by the prosecution does not lead to any doubt to disbelieve the testimony of the witnesses produced in this regard.

For the reasons stated above, we come to the conclusion that the prosecution has successfully established the guilt of the appellants beyond reasonable doubt. We do not find any ground for interfering in the judgment and order passed by the

trial court, convicting the appellant Shiv Singh under Section 302 I.P.C. and Rajendra Singh under Section 302 read with Section 34 and sentencing them for life imprisonment.

The appeal is accordingly dismissed.

The record of the court below be returned immediately & learned C.J.M. concerned is directed to take appropriate steps in order to take the appellants into custody in order to serve out the sentence imposed against them by the trial court.

Let the copy of this order be placed in the Criminal Appeal No. 728 of 2001

(B.C. Kandpal, J) **(M.M. Ghildiyal, J)**

September 2, 2004
ASWAL